



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC Corporations (mFund) Instrument 2024/18*

This is the Explanatory Statement for *ASIC Corporations (mFund) Instrument 2024/18* (the *Instrument*).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

### Summary

1. A responsible entity of a managed investment scheme is generally required to issue interests in the scheme to a retail client in response to an application made in an application form accompanying a Product Disclosure Statement (*PDS*). The Instrument provides conditional relief from the application form requirements for responsible entities that offer interests in the scheme through an electronic application and settlement facility known as ‘mFund’, operated by ASX Limited (*ASX*) and ASX Settlement Pty Limited (*ASX Settlement*).
2. The Instrument replaces ASIC’s previous legislative instrument ASIC Class Order [\[CO 13/1621\]](#) *Exemption and declaration for the operation of mFund*, which sunsetted on 1 April 2024, which is repealed by *ASIC Corporations (Repeal) Instrument 2024/19*.

### Purpose of the Instrument

3. Subsection 1016A(2) of the *Corporations Act 2001 (Act)* requires that a responsible entity may only issue of an interest in a managed investment scheme to a retail client if an application was made using an application form that was included in or accompanied by a PDS that was given to the client and was not defective at the time the application was made.
4. Currently, a responsible entity meets the application form requirement by only issuing products to retail clients who apply using an application form that accompanied the PDS, or by relying on relief such as the relief available under [ASIC Corporations \(Application Form Requirements\) Instrument 2017/241](#).
5. ASX and ASX Settlement applied to ASIC for relief from section 1016A of the Act prior to the introduction of its electronic settlement facility, mFund and [ASIC consulted on the relief](#) in 2013 prior to issuing ASIC Class Order [CO 13/1621]. mFund allows investors to electronically apply for or redeem units in

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simple managed investment schemes that have been admitted to the service through brokers who are authorised to participate.

6. The purpose of the Instrument is to continue to provide relief from section 1016A of the Act to responsible entities who offer and issue interests in managed investment schemes using mFund given strict compliance is not feasible as an application is submitted electronically by a broker on behalf of the client through mFund.
7. Under the Instrument, the policy objective of section 1016A of the Act (i.e. to ensure that a retail client is given a PDS before they are issued with products) is fulfilled in an alternative manner. The responsible entity will not be restricted from issuing without an application form if the broker involved with the order accepts responsibility to give the retail client the current PDS or ensure the retail client has been given the current PDS.
8. In November 2023, ASX and ASX Settlement [announced](#) that they had determined to wind down and close the mFund service with a target removal date of managed investment schemes available under the facility by 31 May 2026.

### **Consultation**

9. Before making the Instrument, [ASIC consulted publicly](#). Two submissions were received. One submission agreed that [CO 13/1621] was continuing to operate effectively and should be remade in substantially the same form. The other submission did not provide any feedback on the operation of [CO 13/1621].

### **Operation of the Instrument**

10. The Instrument exempts a responsible entity of a registered scheme from the requirements in subsection 1016A(2) of the Act and imposes obligations on a financial services licensee (*licensee*) by notionally inserting subsections 1016A(2A), 1016A(2B) and 1016A(2C) into the Act.
11. Subsection 5(1) of the Instrument exempts a responsible entity of a registered scheme from subsection 1016A(2) of the Act in relation to the issue of an interest in the scheme to a person (*acquirer*) in response to an electronic application made to the responsible entity on behalf of the acquirer through mFund. This exemption allows the responsible entity to issue an interest in a registered scheme to an acquirer in response to an electronic application made through mFund.
12. Subsection 5(2) of the Instrument stipulates the circumstances in which the exemption in subsection 5(1) applies. The specified circumstances are:
  - (a) the application made through mFund must contain or be accompanied by an 'electronic confirmation' stating that a PDS with a specified date has been given to the acquirer by a financial services licensee (*licensee*) or an authorised representative of a licensee.

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- (b) The PDS referred to in the confirmation must have been prepared by the responsible entity and must not have been defective as at the time when the application was made. The responsible entity must have had no reason to believe that the requirements of the ASX Operating Rules and ASX Settlement Operating Rules (the **Rules**) have not been satisfied in relation to the application. The Rules can be accessed through [www.asx.com.au](http://www.asx.com.au).
- (c) the responsible entity must reasonably believe that the PDS referred to in the confirmation was available free of charge on the website of ASX as at the time the application was made..
- (d) mFund must be the subject of an exemption under section 791C of the Act. At the date of making this Instrument, mFund was the subject of such an exemption.
13. Section 6 of the Instrument sets out the conditions that a responsible entity that relies on the exemption in subsection 5(1) must comply with. In particular, the responsible entity must:
- (a) within 5 business days after the issue of the interest in a scheme, notify the acquirer in writing that a PDS with the date specified should have been given to the acquirer and if the acquirer has not received it, the acquirer should inform the responsible entity, and that the acquirer may obtain an electronic or hardcopy from the responsible entity free of charge.
- (b) report to ASX in writing within 10 business days if it has reason to believe that a person who acquired an interest in the scheme as a retail client as a result of an application through mFund had not been given, before making the application, the PDS for the interest that was specified in the electronic confirmation in relation to the application; and
- (c) keep records for 7 years, including, a copy of all applications received through mFund and a record of any statement by an acquirer that states or implies that the acquirer was not given, before applying through mFund, the PDS that was specified in the electronic confirmation in relation to the acquirer's application.
14. Section 7 of the Instrument clarifies that requirements in subsection 5(2) and conditions in section 6 of the Instrument also apply to a supplementary PDS.
15. Section 8 of the Instrument inserts subsections 1016A(2A), 1016A(2B) and 1016A(2C) into the Act. These subsections apply to a licensee who, or whose authorised representative, transmits an electronic application for the issue of an interest in a registered scheme through mFund.
16. Subsection 1016A(2A) of the Act stipulates the requirements that the licensee must satisfy before transmitting the electronic application through mFund and the requirements that the licensee must ensure an authorised representative satisfies before transmitting an electronic application through mFund.

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17. Subsection 1016A(2B) of the Act stipulates that subsection 1016A(2A) does not apply where the licensee or its authorised representative believes on ‘reasonable grounds’ that an issue is not a *restricted issue* as defined in subsection 1016A(1) of the Act.
  18. Subsection 1016A(2C) of the Act, clarifies that requirements in subsections 1016A(2A) and 1016A(2B) also apply to a supplementary PDS.

### **Legislative instrument and primary legislation**

19. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because the Instrument contain technical detail which would otherwise introduce unnecessary complexity to the primary legislation. It will be a matter for the Government and for Parliament as to whether the Act or *the Corporations Regulations 2001 (Regulations)* may be amended in future to include the relief in the Instrument.

### **Duration of the Instrument**

20. The duration of the Instrument is 5 years ASIC considers that a maximum of five years is the appropriate duration for the Instrument. If the operation of mFund ceases on an earlier date, based on the drafting of the Instrument, the relief in the Instrument will no longer have any effect.

### **Legislative authority**

21. The Instrument is made under paragraphs 1020F(1)(a) and(c) of the Act.
22. The Instrument is a disallowable legislative instrument.

### **Statement of Compatibility with Human Rights**

23. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

## **Statement of Compatibility with Human Rights**

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*ASIC Corporations (mFund) Instrument 2024/18* (the **Instrument**).

### Overview

1. Generally, a responsible entity of a managed investment scheme may only issue interests in the scheme to a retail client in response to an application made in an application form accompanying a Product Disclosure Statement. The Instrument provides conditional relief from the application form requirements for responsible entities that offer interests through an electronic application and settlement facility known as mFund and operated by ASX Limited and ASX Settlement Pty Limited.

### Assessment of human rights implications

2. The Instrument does not engage any of the applicable rights or freedoms.

### Conclusion

3. This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.